



Personnel and Administrative Policy and Procedure

SUBJECT: Protected Leave	EFFECTIVE DATE: July 1, 2003 REVIEWED: REVISED: November 30, 2007; December 2012; January 1, 2014 (OFLA Bereavement Leave)
CATEGORY: 200 POLICY NUMBER: 200.2	CROSS REFERENCE: Sick Leave Policy 200.51

Purpose: Protected leave as defined by the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA), is intended to ensure that individuals have the opportunity to take up to twelve weeks off in a year for the purposes of caring for a family member with a serious illness or injury, for care and recovery of self, due to a serious illness or injury, or to care for a newborn child or newly adopted child.

Current FMLA or OFLA legislation supersedes this policy.

Definitions

Family Medical Leave: Legislation mandated both at the State (OFLA) and Federal (FMLA) level. It allows an employee, covered under Family Medical Leave to request extended leave time from work if: s/he suffers from a serious health condition (as defined under the laws); or to respond to a serious health condition of an immediate family member; or to take time for the birth of a child; or placement of a child under the age of eighteen (18) (or older if the child is mentally or physically disabled) with the employee for adoption or foster care. Family Medical Leave may be paid or unpaid time off depending on if the employee has any accrued leave.

Immediate Family Member (definition per State and Federal FMLA): Employee's legal spouse or same sex domestic partner; employee's minor child or adult mentally/physically impaired child (biological, adopter, foster or step) to whom custody rights or responsibility have been given to the employee; and parent (biological, adoptive, foster or step) of the employee or employee's legal spouse. Oregon Family Medical Leave also covers Grandchildren and Grandparents.

Parental Leave: Mandated by the State of Oregon. It allows an employee, as covered under Family Medical Leave, to request time from work to care for a new born, newly adopted or newly placed foster child. Parental Leave must be taken in one uninterrupted period and must be completed within twelve (12) months of the birth, adoption or placement of the child. Under OFLA, parental leave for adoption need not be taken all at once.

Bereavement Leave: Mandated by the State of Oregon. It requires employers who are subject to the Oregon Family Leave Law (OFLA) allow employees up to two weeks leave to a maximum of 12 weeks per leave year due to the loss of a family member(s). The leave must be completed within 60 days of the notice of the death of a family member and must be deducted from the 12 weeks of allowable leave under OFLA. A family member is defined as a: spouse, domestic partner, the biological, adoptive or foster parent or child, grandparent, grandchild or a person with whom the employee was or is in a relationship with *in loco parentis* (in place of a parent).

Serious Health Condition: An illness, injury impairment; or physical or mental condition that involves one of the following:

1. **Inpatient care** (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Incapacity and Treatment

(a) A period of incapacity¹ of **more than three (3) consecutive calendar days** (including any subsequent treatment or period of incapacity¹ relating to the same condition), that also involves:

(a) **Treatment² two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or

(b) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment³** under the supervisor on the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

(a) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(b) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and

May cause **episodic** rather than a continuing period of incapacity¹ (e.g. asthma, diabetes, epilepsy, etc.)

5. Permanent/Long-term Conditions Requiring Supervision

A period of **incapacity¹**, which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment** by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

¹ "Incapacity" for purposes of FMLA is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment thereof, or recovery therefrom.

² Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

³ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a period of Incapacity¹ of more than three (3) consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Special Note: If the family member is physically under long-term “constant care” at a nursing home, institution, health care facility, or hospice, all accrual time off shall apply only to time needed to assist the family member when in transition from one facility to another (including time to make arrangements for such transition), and for transportation or other assistance to obtain care from a physician.

Objective: To ensure the City’s compliance with State and Federal Family Medical Leave Law.

Scope: All full and part time employees who on an average work a minimum of twenty-five (25) hours a week and who have been employed for at least one hundred eighty (180) days.

Policy: Employees are entitled to up to twelve (12) weeks leave during a consecutive twelve (12) month period for the purpose of tending to a serious medical condition; birth, adoption or placement of a child up to eighteen (18) years of age; or to care for an immediate family member with a serious health condition; and up to two (2) weeks bereavement leave (deducted from the allowable twelve (12) weeks of leave under OFLA). For purposes of this policy a rolling twelve (12) month period is used.

- Employees are required to use any accrued sick leave, vacation or other paid leave available to them except for compensatory time, in that order.
- If the employee’s paid leave balances are exhausted, the employee may continue FMLA leave on an unpaid leave status or use sick leave donated by other employees through the City’s Sick Leave Donation Program. (See Sick Leave Donation Administrative Policy and Procedure.)
- If an employee is placed in an unpaid leave status, the City will continue to pay its portion of the health care premium; however, the employee is required to continue to pay the employee’s share of the health insurance premium. *If the employee fails to pay their portion of the health insurance premium, the City’s Payroll Department will schedule payment arrangements.*

An employee’s absence as a result of Family Medical Leave shall not be considered for any type of disciplinary action. Retaliation against an employee for inquiring about FMLA or submitting a request for Family Medical Leave is prohibited.

Guidelines for Use

If an employee is off work for more than three (3) consecutive days to care for personal health, immediate family member, birth, adoption or placement of a child, the employee may be entitled to Family Medical Leave. Placement of an employee on FMLA leave may be requested by the employee or by the City. Federal Family Medical Leave will run concurrently with any time loss under workers’ compensation absences. Oregon Family Medical Leave does not run concurrently with workers’ compensation; however Federal Family Medical leave does run concurrently with workers compensation.

Procedures

Employee Initiated:

1. An employee is required to notify his or her supervisor of any leave of absence which may fall under Family Medical Leave Act. When the need for family medical leave can be anticipated, the employee should submit a Family Leave Request Form to their supervisor at least thirty (30) days prior to the commencement of the leave. In an emergency situation the employee may initially make a verbal request for family medical leave which must be followed within five (5) working days by a completed Family Medical Leave Request form.
2. The HR Director will notify the employee whether or not his/her time off work qualifies as FMLA time.
3. Upon return to work, the employee must submit a release to return to work signed by the treating medical provider.
4. The supervisor shall forward the release to return to work to the Human Resources Department (HRD) where it will be filed in the employee's medical file.

City Initiated:

1. When an employee is off work for three (3) or more consecutive days due to health reasons or for some other situation that the City thinks may qualify under Family Medical Leave, the City must initiate the placement of the employee on Family Medical Leave within five (5) business days, absent extenuating circumstances.
2. The supervisor shall notify the Human Resources Department (HRD). HRD will then send the employee an FMLA packet.
3. HRD will notify the employee whether or not his/her time off work qualifies as FMLA.
4. Upon return to work, the employee must submit a release to return to work signed by the treating medical provider.
5. The supervisor shall forward the release to return to work to HRD, where it will be filed in the employee's medical file.

MEDICAL CERTIFICATION

Employees are required under family medical leave to provide medical certification of a serious health condition. Such medical certification must come from the treating physician or medical professional and must be submitted to the supervisor within fifteen (15) calendar days of the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Employees with a "sick child" not covered under serious health conditions, are required to provide a medical certification after three (3) occurrences in a calendar year. Such medical certification must come from the treating physician or medical professional and must be submitted to the supervisor within ten (10) workdays of the leave request.

The medical certification should include information sufficient to verify the serious health condition, along with the anticipated date of return. Employees on extended leaves of absence are required to periodically report in with their supervisor on their medical status and intent to return to work.

General Provisions:

EXCEPTIONS

- In some circumstances an employee may be entitled to an additional twelve (12) weeks for pregnancy related disability.

- An additional twelve (12) weeks may also be provided for sick child leave if the parent is currently on Family Medical Leave and no other family member, including a non-custodial biological parent is willing and able to care for the child.
- Parental leave must be taken in one (1) uninterrupted period, except with written approval.
- Sick child leave may not be provided to an eligible employee if another family member is willing and able to care for the child.

If an employee takes less than twelve (12) weeks of parental leave, the employee is entitled to the balance of the twelve (12) weeks for any other family leave purpose.

Responsibilities

Employees:

- Notify the supervisor and HR when s/he will be off on a leave that may potentially qualify for FMLA.
- Complete the necessary FMLA request form and obtain a completed medical certification form from the treating medical provider and return both to HRD.

Supervisors:

- Notify HRD and the employee when the supervisor believes an employee may be on a leave that would qualify as FMLA.

Human Resources:

- Provide an employee with the FMLA Request Forms packet and medical provider's certification form
- Make a determination if the situation qualifies under FMLA.
- Notify an employee if they are nearing the end of the allowable FMLA leave.

Payroll

- Track the amount of family medical leave that an employee uses.